

No. 48317-3-II

IN THE COURT OF APPEALS DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

JEREMY JAMES, Appellant

SUPPLEMENTAL BRIEF OF APPELLANT

PO Box 829
Graham, WA
253-445-7920

Marie J. Trombley, No. 41410
Attorney for Appellant

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I. Assignments of Error

A. This Court Should Not Impose Costs On Appeal.

Issue Pertaining to Assignment of Error

1. Should an appellate court impose costs on appeal if an indigent appellant does not have a present or future ability to pay those costs?

II. Statement of the Case

The sentencing court reviewed Mr. James' income and concluded the \$1,600 a month stipend he received as a monthly allowance from his tribe was a poverty level income. (Vol. 5 RP 332; 335). Mr. James and his family were homeless. (Vol. 5 RP 334). The trial court stated it was not requiring Mr. James to pay the discretionary financial costs because "I don't think you have the means. I don't think you have the likely ability to pay these amounts of money in any reasonable amount of time." (Vol. 5 RP 335).

The trial court imposed only the mandatory legal financial obligations on both charges, which combined amounted to \$1,500. (Vol. 5 RP 335). The trial court also granted an order authorizing Mr. James to seek review wholly at public expense. (CP 107-108).

III. Argument

A. This Court Should Not Impose Appellate Costs.

RAP 15.2(f) provides that where a trial court has made an unchallenged finding of indigency, there is a presumption of continued indigency throughout review unless the trial court finds the party's financial condition has improved to the extent that the party is no longer indigent. *State v. Sinclair*, 192 Wn.App. 380, 393, 367 P.3d 612 (2016). Here, the trial court imposed only the mandatory legal financial obligations. (CP 96). Mr. James was found indigent for purposes of his appeal and the court authorized review wholly at public expense. (CP 107-108).

RAP 14.2 authorizes the State to request the Court to order an appellant to pay appellate costs if the State substantially prevails on appeal. Rather than remanding to the trial court to determine ability to pay, the reviewing court is permitted to exercise its discretion to award or deny such appellate costs, during the course of review when the issue is raised in an appellate brief. RCW 10.73.160(1); *State v. Nolan*, 141 Wn.2d 620, 626, 8 P.3d 3000 (2000); *Sinclair*, 192 Wn.App. at 382, 390.

Appellate costs, which by statute are discretionary, are added to the legal financial obligations (LFOs) imposed by a trial court. The imposition of LFOs from a trial and on appeal creates problematic ongoing consequences for an indigent criminal defendant. The financial obligations grow at a compounded interest rate of 12%, the court's jurisdiction is lengthened, they can interfere with employment opportunities, and create barriers to re-integration in the community. Additionally, the 'doubtful recoupment of money by the government, and inequities in administration' are also entirely appropriate for consideration by the appellate court when determining whether to impose costs. *State v. Blazina*, 182 Wn.2d 827, 835, 344 P.3d 680 (2015); *Sinclair*, 192 Wn.App. at 391; RCW 10.82.090(1). As the *Sinclair* court reasoned, exercising discretion means making an individualized inquiry to decide. *Sinclair*, 192 Wn.App. at 392.

In this case, there are several reasons this Court should exercise its discretion to not award appellate costs. At sentencing the trial court acknowledged that Mr. James lived at a poverty level income. He was homeless. He was sentenced to 48 months of confinement. (CP 98). The trial court waived all costs except the mandatory costs of \$800. (Vol. 5RP 335; CP 96). He also pleaded

guilty separately to a count of bail jumping and the court specifically waived the DNA fee and all costs except the mandatory costs of \$700. (Vol. 5RP 335). The court authorized his appeal *in forma pauperis*. (CP 107-108).

Given his lack of assets, homelessness, and 48-month prison sentence, and current obligation of \$1,500, it is unrealistic to believe Mr. James would be able to pay appellate costs without being financially crippled for many years. Mr. James respectfully asks this Court to exercise its discretion to reach a just and equitable result and direct that no appellate costs should be awarded should the State substantially prevail on appeal and submit a cost bill.

IV. Conclusion

Based on the foregoing facts and authorities, Mr. James respectfully asks this Court to exercise its discretion and not impose costs on appeal should the State substantially prevail.

Dated this 15th day of August 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Marie J. Trombley, attorney for Jeremy James do hereby
certify under penalty of perjury under the laws of the United States
and the State of Washington, of appellant's supplemental brief was
sent by first class mail, postage prepaid on August 15, 2016 to:

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and email, per prior agreement between the parties to:

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